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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 KRISTOPHER EMILLE FISHER,) Case No. CV 16-2680-JPR
12)
13 Plaintiff,)
14) MEMORANDUM DECISION AND ORDER
15 v.) AFFIRMING COMMISSIONER
16)
17 NANCY A. BERRYHILL, Acting)
18 Commissioner of Social)
19 Security,)
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21 Defendant.)
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1 **II. BACKGROUND**

2 Plaintiff was born in 1972. (Administrative Record ("AR")
3 41.) He completed the 12th grade and has received his high-
4 school diploma. (Id.) Through 2008, he worked as a bus driver,
5 sales clerk, grocery clerk, and mail carrier. (AR 169.)

6 On October 30, 2012, Plaintiff filed applications for DIB
7 and SSI, alleging in each that he had been unable to work since
8 December 31, 2008 (AR 138, 145), because of depression, loss of
9 memory, posttraumatic stress disorder, and anxiety (AR 163).
10 After his applications were denied initially (AR 94-95), he
11 requested a hearing before an Administrative Law Judge (AR 99).
12 A hearing was held on April 24, 2014, at which Plaintiff, who was
13 represented by counsel, testified, as did a vocational expert.
14 (AR 35-69.) In a written decision issued on May 29, 2014, the
15 ALJ found Plaintiff not disabled. (AR 20-34.) Plaintiff
16 requested review from the Appeals Council, and on February 3,
17 2016, it denied review. (AR 1-7.) This action followed.

18 **III. STANDARD OF REVIEW**

19 Under 42 U.S.C. § 405(g), a district court may review the
20 Commissioner's decision to deny benefits. The ALJ's findings and
21 decision should be upheld if they are free of legal error and
22 supported by substantial evidence based on the record as a whole.
23 See id.; Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra
24 v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). Substantial
25 evidence means such evidence as a reasonable person might accept
26 as adequate to support a conclusion. Richardson, 402 U.S. at
27 401; Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007).
28 It is more than a scintilla but less than a preponderance.

1 Lingenfelter, 504 F.3d at 1035 (citing Robbins v. Soc. Sec.
2 Admin., 466 F.3d 880, 882 (9th Cir. 2006)). To determine whether
3 substantial evidence supports a finding, the reviewing court
4 "must review the administrative record as a whole, weighing both
5 the evidence that supports and the evidence that detracts from
6 the Commissioner's conclusion." Reddick v. Chater, 157 F.3d 715,
7 720 (9th Cir. 1996). "If the evidence can reasonably support
8 either affirming or reversing," the reviewing court "may not
9 substitute its judgment" for the Commissioner's. Id. at 720-21.

10 **IV. THE EVALUATION OF DISABILITY**

11 People are "disabled" for purposes of receiving Social
12 Security benefits if they are unable to engage in any substantial
13 gainful activity owing to a physical or mental impairment that is
14 expected to result in death or has lasted, or is expected to
15 last, for a continuous period of at least 12 months. 42 U.S.C.
16 § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257 (9th Cir.
17 1992).

18 A. The Five-Step Evaluation Process

19 The ALJ follows a five-step sequential evaluation process to
20 assess whether a claimant is disabled. 20 C.F.R.

21 §§ 404.1520(a)(4), 416.920(a)(4); Lester v. Chater, 81 F.3d 821,
22 828 n.5 (9th Cir. 1995) (as amended Apr. 9, 1996). In the first
23 step, the Commissioner must determine whether the claimant is
24 currently engaged in substantial gainful activity; if so, the
25 claimant is not disabled and the claim must be denied.
26 §§ 404.1520(a)(4)(i), 416.920(a)(4)(i).

27 If the claimant is not engaged in substantial gainful
28 activity, the second step requires the Commissioner to determine

1 whether the claimant has a "severe" impairment or combination of
2 impairments significantly limiting his ability to do basic work
3 activities; if not, the claimant is not disabled and his claim
4 must be denied. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

5 If the claimant has a "severe" impairment or combination of
6 impairments, the third step requires the Commissioner to
7 determine whether the impairment or combination of impairments
8 meets or equals an impairment in the Listing of Impairments set
9 forth at 20 C.F.R. part 404, subpart P, appendix 1; if so,
10 disability is conclusively presumed. §§ 404.1520(a)(4)(iii),
11 416.920(a)(4)(iii).

12 If the claimant's impairment or combination of impairments
13 does not meet or equal an impairment in the Listing, the fourth
14 step requires the Commissioner to determine whether the claimant
15 has sufficient residual functional capacity ("RFC")¹ to perform
16 his past work; if so, he is not disabled and the claim must be
17 denied. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). The claimant
18 has the burden of proving he is unable to perform past relevant
19 work. Drouin, 966 F.2d at 1257. If the claimant meets that
20 burden, a prima facie case of disability is established. Id.

21 If that happens or if the claimant has no past relevant
22 work, the Commissioner then bears the burden of establishing that
23 the claimant is not disabled because he can perform other
24 substantial gainful work available in the national economy.

25
26 ¹ RFC is what a claimant can do despite existing exertional
27 and nonexertional limitations. §§ 404.1545, 416.945; see Cooper
28 v. Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989). The
Commissioner assesses the claimant's RFC between steps three and
four. Laborin v. Berryhill, ___F.3d___, No. 15-15776, 2017 WL
3496031, at *2 (9th Cir. Aug. 16, 2017) (citing § 416.920(a)(4)).

1 §§ 404.1520(a)(4)(v), 416.920(a)(4)(v); Drouin, 966 F.2d at 1257.
2 That determination comprises the fifth and final step in the
3 sequential analysis. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v);
4 Lester, 81 F.3d at 828 n.5; Drouin, 966 F.2d at 1257.

5 B. The ALJ's Application of the Five-Step Process

6 At step one, the ALJ found that Plaintiff had not engaged in
7 substantial gainful activity since December 31, 2008, the alleged
8 onset date. (AR 26-27.) At step two, he concluded that
9 Plaintiff had no physical impairments but had medically
10 determinable mental ones: depression and PTSD. (AR 27.) Those
11 impairments were not severe, however. (Id.) Plaintiff's
12 depression and PTSD produced "only mild limitations" on his
13 activities of daily living, social functioning, and ability to
14 maintain concentration, persistence, and pace. (AR 30.) Thus,
15 the ALJ concluded that Plaintiff was not disabled and did not
16 proceed to the later steps of the sequential evaluation. (AR 30-
17 31.)

18 V. DISCUSSION

19 Plaintiff argues that the ALJ erred in rejecting the
20 credibility of his testimony because he failed to articulate
21 clear and convincing reasons for doing so. (See J. Stip. at 4.)
22 For the reasons discussed below, the ALJ did not err.² Moreover,
23 Plaintiff does not challenge the ALJ's finding at step two that

24
25 ² This claim is likely forfeited because Plaintiff never
26 raised it to the Appeals Council. (See AR 216 (challenging only
27 ALJ's rejection of treating doctor's opinion and his assessment
28 of RFC)); see also Meanel v. Apfel, 172 F.3d 1111, 1115 (9th Cir.
1999) (as amended); Shaibi v. Berryhill, ___F.3d___, No. 15-16849,
2017 WL 3598085, at *6 (9th Cir. Aug. 22, 2017). Because
Defendant has not raised waiver, however, the Court considers
Plaintiff's claim on the merits.

1 his impairments were not severe. That finding mandates the
2 conclusion that Plaintiff was not disabled. See Baxter v.
3 Sullivan, 923 F.2d 1391, 1395 (9th Cir. 1991) ("If the impairment
4 is not severe, the claimant is not disabled."). Because that
5 finding may have been based in part on the ALJ's rejection of
6 Plaintiff's symptom testimony, however, the Court construes
7 Plaintiff's briefing liberally to include a challenge to it.

8 A. Applicable Law

9 An ALJ's assessment of the credibility of a claimant's
10 allegations concerning the severity of his symptoms is entitled
11 to "great weight." See Weetman v. Sullivan, 877 F.2d 20, 22 (9th
12 Cir. 1989) (as amended); Nyman v. Heckler, 779 F.2d 528, 531 (9th
13 Cir. 1986) (as amended). "[T]he ALJ is not required to believe
14 every allegation of disabling pain, or else disability benefits
15 would be available for the asking, a result plainly contrary to
16 42 U.S.C. § 423(d)(5)(A)." Molina v. Astrue, 674 F.3d 1104, 1112
17 (9th Cir. 2012) (citing Fair v. Bowen, 885 F.2d 597, 603 (9th
18 Cir. 1989)).

19 In evaluating a claimant's subjective symptom testimony, the
20 ALJ engages in a two-step analysis. See Lingenfelter, 504 F.3d
21 at 1035-36; see also SSR 96-7p, 1996 WL 374186 (July 2, 1996).³
22 "First, the ALJ must determine whether the claimant has presented
23 objective medical evidence of an underlying impairment [that]
24 could reasonably be expected to produce the pain or other
25

26 ³ Social Security Ruling 16-3p, 2016 WL 1119029, effective
27 March 28, 2016, rescinded SSR 96-7p, which provided the framework
28 for assessing the credibility of a claimant's statements. SSR
16-3p was not in effect at the time of the ALJ's decision in this
case, however.

1 symptoms alleged." Lingenfelter, 504 F.3d at 1036. If such
2 objective medical evidence exists, the ALJ may not reject a
3 claimant's testimony "simply because there is no showing that the
4 impairment can reasonably produce the degree of symptom alleged."
5 Smolen v. Chater, 80 F.3d 1273, 1282 (9th Cir. 1996) (emphasis in
6 original).

7 If the claimant meets the first test, the ALJ may discredit
8 the claimant's subjective symptom testimony only if he makes
9 specific findings that support the conclusion. See Berry v.
10 Astrue, 622 F.3d 1228, 1234 (9th Cir. 2010). Absent a finding or
11 affirmative evidence of malingering, the ALJ must provide "clear
12 and convincing" reasons for rejecting the claimant's testimony.
13 Brown-Hunter v. Colvin, 806 F.3d 487, 493 (9th Cir. 2015) (as
14 amended); Treichler v. Comm'r of Soc. Sec. Admin., 775 F.3d 1090,
15 1102 (9th Cir. 2014). The ALJ may consider, among other factors,
16 (1) ordinary techniques of credibility evaluation, such as the
17 claimant's reputation for lying, prior inconsistent statements,
18 and other testimony by the claimant that appears less than
19 candid; (2) unexplained or inadequately explained failure to seek
20 treatment or to follow a prescribed course of treatment; (3) the
21 claimant's daily activities; (4) the claimant's work record; and
22 (5) testimony from physicians and third parties. Rounds v.
23 Comm'r Soc. Sec. Admin., 807 F.3d 996, 1006 (9th Cir. 2015) (as
24 amended); Thomas v. Barnhart, 278 F.3d 947, 958-59 (9th Cir.
25 2002). If the ALJ's credibility finding is supported by
26 substantial evidence in the record, the reviewing court "may not
27 engage in second-guessing." Thomas, 278 F.3d at 959.

1 B. Relevant Background

2 Plaintiff has sought and received limited treatment for his
3 mental impairments. The record contains no psychiatric or
4 mental-health records from before 2012 even though his disability
5 allegedly began in December 2008. (AR 138, 145.) In September
6 2012, Plaintiff received an "adult short assessment" at Augustus
7 F. Hawkins Mental Health Center. (AR 218-20.) He reported
8 depressive symptoms, paranoia, and an unspecified childhood
9 trauma. (Id.) Afterward, he received follow-up medication
10 support services in December 2012 and January 2013, through which
11 he was prescribed medication for depression. (AR 222-24.)

12 In March 2013, Plaintiff was assessed at Harbor UCLA Medical
13 Center, where he again reported suffering from depression. (AR
14 225-31.) In April 2013, he was interviewed by a Harbor
15 psychiatrist, who diagnosed him with depression, noting his "flat
16 affect," "anxiety," and feelings of "sad[ness], poor appetite,
17 poor sleep/insomnia, [and] pain." (AR 232-38.) But the record
18 does not contain any later Harbor treatment records except for
19 consultations for foot and mouth issues. (See AR 301-12 (June
20 2013 tooth extraction), 279-90 (July 2013 tooth extraction), 291-
21 300 (Aug. 2013 tooth extraction), 270-78 (same), 265-69 (Apr.
22 2014 foot sprain).)

23 In June 2013, Plaintiff received a complete psychological
24 evaluation by the Department of Social Services. (AR 239-44.)
25 Plaintiff complained of depression, anxiety, and PTSD and
26 reported that he was sexually molested when he was young, that he
27 could not keep a job, and that he was uncomfortable being around
28 "a lot of people." (AR 240.) Plaintiff had never been

1 psychiatrically hospitalized, however. (Id.) He took medication
2 that "helped" him with his depression and anxiety and indicated
3 that he was able to "take care of [his grandmother]," "manage his
4 own funds," and "dress, bathe, shop and do household chores."
5 (AR 240-41.) He also had friends and "enjoyed" playing video
6 games "most of the day." (AR 241.)

7 As part of the evaluation, Plaintiff underwent psychometric
8 testing. (See AR 239.) Though he completed a standardized
9 questionnaire with "copious notations," he put forth "very little
10 effort" on the test, "lowering his scores to within the
11 borderline range." (Id.) The test results were noted to be an
12 underestimation of his ability. (AR 242.) Plaintiff had
13 organized, linear thoughts; moderately diminished memory;
14 moderately diminished attention and concentration; and age-
15 appropriate insight and judgment, responding "appropriately to
16 imaginary situations requiring social judgment and knowledge of
17 the norms." (AR 241.) The evaluation concluded that Plaintiff
18 likely had dysthymia⁴ and personality-disorder dependent traits.
19 (AR 242.) Despite a "mild inability to understand, remember and
20 carry out detailed instructions," Plaintiff was found capable of
21 "interact[ing] appropriately with supervisors, coworkers and
22 peers," managing his own finances, and making simple "work-
23 related decisions without special supervision." (AR 243.)

24 At his April 24, 2014 hearing, Plaintiff testified that he
25

26 ⁴ Dysthymia is a "chronic mood disorder manifested as
27 depression." Stedman's Medical Dictionary 556 (27th ed. 2000);
28 see also Types of Depression, PubMed Health, <https://www.ncbi.nlm.nih.gov/pubmedhealth/PMH0072472/> (last updated Jan. 12, 2017) ("chronic depressive disorder").

1 was no longer working because of his mental-health issues. (AR
2 45.) He testified that he sometimes had suicidal thoughts, did
3 not like to be around a lot of people, and had trouble sleeping.⁵
4 (AR 50-52.) He attributed his mental issues to his past abuse
5 (AR 47) and testified that he intended to speak to his doctor
6 about future therapy (AR 48). He also testified that he was
7 living with his father, grandmother, and aunt (AR 42) and that he
8 fed and bathed his grandmother and drove her to doctor's
9 appointments after "getting her in the car" and later out (AR
10 43). In his own words, he provided "a lot [of] assistance" to
11 his grandmother. (Id.)

12 Plaintiff's Adult Function Report and the Third-Party
13 Function Report submitted by his sister, both completed on March
14 7, 2013, indicated that he took care not only of his grandmother
15 but also his father. (AR 182, 191.) Plaintiff also apparently
16 cared for his father's dog by himself in exchange for room and
17 board. (Id.) The function reports stated that he had no problem
18 with personal care (id.), prepared his own meals daily (AR 183,
19 192), and regularly went to church (AR 185, 194). His sister
20 specifically noted that despite his "increased anxiety in public
21 around strangers," Plaintiff did not "have any problems getting
22 along with family, friends, neighbors, or others." (AR 195.)

23
24 ⁵ Plaintiff's testimony about his insomnia implied that it
25 resulted from his depression. (See, e.g., AR 52 (attributing it
26 to "nightmares" and his "stressful" situation).) But elsewhere
27 the record shows that it actually occurred because his father,
28 who was hard of hearing, watched TV "all night" with "very loud
volume." (AR 191 (sister's function report); see also AR 182
(Plaintiff acknowledging in Adult Function Report that his father
"keeps [him] up" at night, the only reason given for poor
sleep).)

1 C. Analysis

2 The ALJ found that Plaintiff did not have a "severe mental
3 impairment" in part because his allegations regarding the
4 severity of his symptoms and his functional limitations were not
5 fully credible. (AR 29-30.) Plaintiff argues that the ALJ
6 failed to give clear and convincing reasons to support his
7 credibility assessment. (J. Stip. at 4.) As discussed below,
8 the ALJ's credibility assessment was based on specific, clear and
9 convincing findings that Plaintiff's allegations were (1)
10 unsupported by his medical records and (2) inconsistent with his
11 daily activities.⁶ (AR 29.) Accordingly, the ALJ did not err.

12 First, the ALJ correctly noted that Plaintiff not only had
13 "very scarce" medical records (AR 28) but also "no treating
14 record . . . showing any sustained course of psychiatric
15 treatment" (AR 29). The ALJ, in great detail, evaluated
16 Plaintiff's medical records, which established that his
17 impairments were not severe. (See AR 27-30.) Plaintiff had only
18 a few psychiatric assessments, with generally mild diagnoses
19 therein, and lacked substantiating treatment records. (See id.)
20 The ALJ in particular relied on the conclusions of Dr. Barbara
21 Moura, a consulting psychologist who reviewed Plaintiff's medical

22
23 ⁶ Plaintiff initially argues that the ALJ used "oft rejected
24 boilerplate language" to dismiss his testimony. (J. Stip. at 6-
25 7.) Indeed, use of boilerplate language is disfavored, see
26 Laborin v. Berryhill, __F.3d__, No. 15-15776, 2017 WL 3496031, at
27 *3 (9th Cir. Aug. 16, 2017), and the ALJ arguably used some (see,
28 e.g., AR 29). But the ALJ specifically identified the testimony
he found not credible and then provided several reasons
supporting the finding. Thus, any use of boilerplate language
was harmless. See Laborin, 2017 WL 3496031, at *3
("[B]oilerplate language is not, by itself, reversible error and
can be harmless.").

1 records and found his mental impairments to be mild. (AR 30.)
2 Plaintiff has not challenged the ALJ's finding that Dr. Moura's
3 opinion was entitled to "significant weight." (Id.) And Dr.
4 Moura concluded that Plaintiff's depression was "currently
5 nonsevere" given the lack of significant longitudinal history,
6 his mild affective symptoms, and the poor effort he displayed in
7 his psychological testing.⁷ (AR 89.) She recounted Plaintiff's
8 or his sister's statements that he had "no problem" with personal
9 care, preparing meals, shopping in stores and by computer,
10 counting change and handling bank accounts, and spending time at
11 church with others. (See AR 87 (apparently referring to AR 182-
12 86, 191-95).) Thus, to the extent that Plaintiff alleges his
13 depression and PTSD reach disability-level severity, such
14 allegations are not corroborated by his medical records.

15 Further, the ALJ properly found that Plaintiff had no
16 sustained treatment. Tommasetti v. Astrue, 533 F.3d 1035, 1039
17 (9th Cir. 2008) (ALJ may discount claimant's testimony in light
18 of "unexplained or inadequately explained failure to seek
19 _____

20 ⁷ The ALJ specifically noted that Plaintiff "put forth very
21 little effort" on his June 2013 psychometric test, which
22 artificially lowered his scores to within a borderline range of
23 functionality. (AR 29; see AR 239, 242.) Though not explicitly
24 tied to the assessment of Plaintiff's credibility, the finding
25 relates to the consistency between Plaintiff's medical records
26 and his testimony regarding his symptoms. Plaintiff's poor
27 effort on his psychometric test was itself a legally sufficient
28 and factually supported reason for discounting the credibility of
his statements. See Thomas, 278 F.3d at 959 (ALJ properly
considered claimant's "self-limiting behaviors" and "efforts to
impede accurate testing" during two physical-capacity
evaluations); Tonapetyan v. Halter, 242 F.3d 1144, 1148 (9th Cir.
2001) (ALJ properly considered claimant's poor effort during
consulting examinations in discounting her statements'
credibility).

1 treatment or to follow a prescribed course of treatment"); see
2 also Orn v. Astrue, 495 F.3d 625, 638 (9th Cir. 2007). The
3 record indicates only that Plaintiff is on depression medication
4 and may have attended psychotherapy sessions since 2013 that have
5 been "minimally helpful." (AR 29.) Moreover, though Plaintiff
6 appears to have suffered mental issues since childhood, no record
7 of treatment seems to exist from before 2012, let alone from the
8 time of the alleged disability onset date, December 31, 2008.
9 Thus, substantial evidence supports the ALJ's finding that
10 Plaintiff's testimony was not credible, and hence that his
11 symptoms were not severe, in part because the lack of treatment
12 records so indicates. See Carmickle v. Comm'r, Soc. Sec. Admin.,
13 533 F.3d 1155, 1161 (9th Cir. 2008) ("Contradiction with the
14 medical record is a sufficient basis for rejecting the claimant's
15 subjective testimony."); Burch v. Barnhart, 400 F.3d 676, 681
16 (9th Cir. 2005) ("Although lack of medical evidence cannot form
17 the sole basis for discounting pain testimony, it is a factor
18 that the ALJ can consider in his credibility analysis."). The
19 ALJ therefore properly found that Plaintiff's testimony
20 concerning his symptoms was undermined by the lack of medical
21 evidence to support it. See Womeldorf v. Berryhill, 685 F. App'x
22 620, 621 (9th Cir. 2017) ("[The ALJ] properly discounted
23 [Plaintiff's] severity claims by pointing to . . . the nature of
24 the medical evidence itself.").

25 Plaintiff argues that the ALJ's reliance on his lack of
26 mental-health treatment was inappropriate because "it is a
27 questionable practice to chastise one with a mental impairment
28 for the exercise of poor judgment in seeking rehabilitation."

1 (J. Stip. at 10 (quoting Nguyen v. Chater, 100 F.3d 1462, 1465
2 (9th Cir. 1996).) Nguyen, however, is distinguishable. It
3 involved an ALJ who discredited a psychologist's diagnosis of
4 depression based on the lack of a treatment record, whereas here
5 the ALJ relied on Plaintiff's lack of treatment records to
6 discredit his claims as to the severity of his symptoms.
7 Moreover, even once Plaintiff apparently sought treatment in
8 2012, it was minimal. The ALJ concluded that Plaintiff was
9 mentally impaired by depression but reasonably found that the
10 impairment did not meet the degree of functional limitation
11 claimed. Thus, without treatment records to indicate otherwise,
12 and with the only functional assessments in the record showing
13 mostly mild findings, the substantial weight of the evidence
14 supports the ALJ's finding that Plaintiff's depression produced
15 only mild limitations. See Judge v. Astrue, No. CV 09-4743-PJW,
16 2010 WL 3245813, at *4 (C.D. Cal. Aug. 16, 2010) ("[The
17 claimant's] failure to get treatment after 1997 seems more a
18 function of the fact that she did not need it, as opposed to her
19 inability to comprehend that she needed it.").

20 Second, the ALJ properly found that Plaintiff's activities
21 of daily living were inconsistent with his claims of functional
22 limitation. (AR 29-30.) An ALJ may properly discount the
23 credibility of a plaintiff's subjective symptom statements when
24 they are inconsistent with his daily activities. See Molina, 674
25 F.3d at 1112. "Even where those [daily] activities suggest some
26 difficulty functioning, they may be grounds for discrediting the
27 claimant's testimony to the extent that they contradict claims of
28 a totally debilitating impairment." Id. at 1113.

1 To the extent Plaintiff's symptom statements focused on his
2 alleged inability to be around other people, substantial evidence
3 in the record suggests otherwise. Plaintiff testified that he
4 did not "like [being] around a lot of . . . people" (AR 51) and
5 was "very [cautious] of others" (AR 187). But both Plaintiff and
6 his sister said he was able to go out and shop, attend church and
7 church outings, and apparently get along well with "family,
8 friends, neighbors, and others" (AR 184-86, 193-94), suggesting
9 that he was indeed able to be around people and function
10 effectively. His June 2013 psychological evaluation similarly
11 concluded that he was capable of interacting "appropriately with
12 supervisors, coworkers and peers." (AR 243.) Thus, despite
13 Plaintiff's statements of being anxious around others,
14 substantial evidence in the record regarding his activities of
15 daily living supports the ALJ's finding that such statements
16 lacked credibility. See Womeldorf, 685 F. App'x at 621
17 (upholding ALJ's discounting of plaintiff's credibility in part
18 because his activities of daily living "were not entirely
19 consistent with his claimed inability to engage in social
20 interactions").

21 Plaintiff also claimed that he was unable to work because of
22 his "lack of productivity" (AR 44), which was in part because of
23 his "passive attitude" and lack of motivation (AR 45; see AR 51).
24 But this claim, too, lacked credibility given the record as a
25 whole. Plaintiff testified that he was able to care for his
26 grandmother and provide "a lot [of] assistance," apparently on an
27 on-call basis. (AR 43.) He fed, bathed, and drove her to
28 doctor's appointments, getting her in and out of the car. (Id.)

1 He also took care of his father and his father's dog in exchange
2 for room and board. (AR 182, 191.) Plaintiff prepared his own
3 meals every day, shopped in stores and by computer, handled
4 money, played video games, and went to church. (AR 182-86, 191-
5 95.) These daily tasks are inconsistent with Plaintiff's
6 allegations that he was unable to be productive.

7 Plaintiff argues that despite his ability to help his
8 grandmother, his activity is "far short of what is needed to
9 demonstrate the capacity to perform work activity on a sustained
10 basis." (J. Stip. at 11.) "[I]f a claimant engages in numerous
11 daily activities involving skills that could be transferred to
12 the workplace, the ALJ may discredit the claimant's allegations
13 upon making specific findings relating to those activities."

14 Burch, 400 F.3d at 681. While the ALJ could have explained his
15 findings more fully, as discussed above, they were sufficient.

16 But even had the ALJ erred in his credibility determination,
17 the error was likely harmless. See Stout v. Comm'r, Soc. Sec.
18 Admin., 454 F.3d 1050, 1055 (9th Cir. 2006) (nonprejudicial or
19 irrelevant mistakes harmless). The VE testified that a person
20 with "moderate limitation in dealing with co-workers,
21 supervisors, and the general public" and "moderate limitation in
22 attention[and] concentration" – the most severe functional
23 limitations appearing anywhere in the record – could perform jobs
24 available in the economy. (AR 67-68.) Counsel did not challenge
25 that testimony. Because the testimony took into account
26 Plaintiff's alleged limitations and concluded he would
27 nonetheless be able to work, any error in the ALJ's credibility
28 determination was likely harmless. See Tommasetti, 533 F.3d at

1 1038 (9th Cir. 2008) (error is harmless when it is
2 "inconsequential to the ultimate nondisability determination");
3 cf. Heston v. Comm'r of Soc. Sec., 245 F.3d 528, 536 (6th Cir.
4 2001) (finding error harmless when ALJ did not discuss opinion of
5 treating physician but VE took relevant limitations into
6 consideration anyway).

7 For all these reasons, Plaintiff is not entitled to relief.

8 **VI. CONCLUSION**

9 Consistent with the foregoing and under sentence four of 42
10 U.S.C. § 405(g),⁸ IT IS ORDERED that judgment be entered
11 AFFIRMING the Commissioner's decision, DENYING Plaintiff's
12 request for remand, and DISMISSING this action with prejudice.

13
14 DATED: September 5, 2017_____



JEAN ROSENBLUTH
U.S. Magistrate Judge

15
16
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24
25 _____
26 ⁸ That sentence provides: "The [district] court shall have
27 power to enter, upon the pleadings and transcript of the record,
28 a judgment affirming, modifying, or reversing the decision of the
Commissioner of Social Security, with or without remanding the
cause for a rehearing."